
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
M. J. Phillips Communications Inc.)	File No.: EB-FIELDNER-13-00007256
Licensee of AM Station WJL)	
Facility ID # 39517)	
Licensee of STL Station WHB714)	NOV No.: V201332400021
Registrant of Antenna Structure Number 1245343)	
Niagara Falls, New York)	
)	

NOTICE OF VIOLATION

Released: March 25, 2013

By the District Director, Philadelphia Office, Northeast Region, Enforcement Bureau:

1. This is a Notice of Violation (Notice) issued pursuant to Section 1.89 of the Commission's rules (Rules)¹ to M. J. Phillips Communications, Inc (Phillips), licensee of AM Station WJL and Aural Studio Transmitter Link (STL) Station WHB714 and registrant of antenna structure number 1245343 in Niagara Falls, New York. Pursuant to Section 1.89(a) of the Rules, issuance of this Notice does not preclude the Enforcement Bureau from further action if warranted, including issuing a Notice of Apparent Liability for Forfeiture for the violations noted herein.²

2. On March 6, 2013 and March 7, 2013, agents of the Enforcement Bureau's Philadelphia Office inspected the main studio of AM Station WJL located in West Seneca, New York and antenna structure number 1245343 in Niagara Falls, New York and observed the following violations:

- a. 47 C.F.R. § 1.903(a): "Stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service as set forth in this title and with a valid authorization granted by the Commission under the provisions of this part..." At the time of the inspection, Phillips was operating an STL on the unauthorized frequency 947.0 MHz from the unauthorized location of 976-B Union Road, West Seneca, New York. The license for Station WHB714 only authorizes Phillips to operate the STL on the frequency 947.5 MHz at 1224 Main Street, Niagara Falls, New York.

¹ 47 C.F.R. § 1.89.

² 47 C.F.R. § 1.89(a).

- b. 47 C.F.R. § 11.35(a): “EAS Participants are responsible for ensuring that EAS Encoders, EAS Decoders, Attention Signal generating and receiving equipment, and Intermediate Devices used as part of the EAS to decode and/or encode messages formatted in the EAS Protocol and/or the Common Alerting Protocol (CAP) are installed so that the monitoring and transmitting functions are available during the times the stations and systems are in operation. Additionally, EAS Participants must determine the cause of any failure to receive the required tests or activations specified in §11.61(a)(1) and (2). Appropriate entries indicating reasons why any tests were not received must be made in the broadcast station log as specified in §§73.1820 and 73.1840 of this chapter for all broadcast streams...” At the time of inspection, WJL did not have records to indicate their equipment was receiving tests formatted with the Common Alerting Protocol (CAP). Additionally, there were no records to determine the cause of failure to receive any CAP message.
- c. 47 C.F.R. § 11.52(d)(1): “With respect to monitoring for EAS messages that are formatted in accordance with the EAS Protocol, EAS Participants must monitor two EAS sources. The monitoring assignments of each broadcast station ... are specified in the State EAS Plan and FCC Mapbook.” At the time of inspection, Phillips was not monitoring WBUF (92.9 MHz) as required by the New York State EAS Plan.³
- d. 47 C.F.R. § 73.1350(a): “Each licensee is responsible for maintaining and operating its broadcast station in a manner ... in accordance with the terms of the station authorization.” Phillips was operating Station WJL from an unauthorized location.⁴
- e. 47 C.F.R. § 73.1820(a)(1)(iii): “Entries must be made in the station log...of each test and activation of the Emergency Alert System (EAS) pursuant to the requirement of part 11 of this chapter and the EAS Operating Handbook.” At the time of the inspection, there were no logs of the Required Weekly Tests and Required Monthly Tests received.
- f. 47 C.F.R. § 73.1870(a)(3): “The designation of the chief operator must be in writing with a copy of the designation posted with the station license. Agreements with chief operators serving on a contract basis must be in writing with a copy kept in the station files.” At the time of the inspection, Phillips had not made the designation of the chief operator in writing.

³ According to the NY State EAS Plan, WJL must monitor WWKB (1520 kHz) and WBUF (92.9 MHz) for EAS activations. At the time of the inspection, WJL was monitoring WBEN and WWKB.

⁴ Phillips was operating Station WJL at the coordinates 43° 04' 52" North Latitude 079° 00' 59" West Longitude. The authorized transmitter site specified on the WJL license (BL-840412AE) is 43° 04' 43" North Latitude 079° 00' 40" West Longitude.

- g. 47 C.F.R. § 73.3526(e)(12): The material[s] to be retained in the public inspection file [are]... *Radio issues/programs lists*. For commercial AM and FM broadcast stations, every three months a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period. The list for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October-December, April 10 for the quarter January-March, etc.). The list shall include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs shall include, but shall not be limited to, the time, date, duration, and title of each program in which the issue was treated..." The WJL issues program lists did not include descriptions that specified the time, date, and duration of the program and include narratives describing the community issues given significant treatment.
- h. 47 C.F.R. § 17.4(g): "The Antenna Structure Registration Number must be displayed in a conspicuous place so that it is readily visible near the base of the antenna structure. Materials used to display the Antenna Structure Registration Number must be weather-resistant and of sufficient size to be easily seen at the base of the antenna structure." At the time of inspection, the agent observed that the posted antenna structure registration number was faded and unreadable.
- i. 47 C.F.R. § 17.47(a)(1): "The owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications referenced in this part: Shall make an observation of the antenna structure's lights at least once each 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights, to insure that all such lights are functioning properly as required; or alternatively, (2) Shall provide and properly maintain an automatic alarm system designed to detect any failure of such lights and to provide indication of such failure to the owner." According to WJL's representative, the antenna structure was not equipped with an automatic monitoring system, and observations of the structure's lights were not being made once every 24 hours.
- j. 47 C.F.R. § 17.50: "Antenna structures requiring painting under this part shall be cleaned or repainted as often as necessary to maintain good visibility." At the time of the inspection, the agent observed that the white paint on the structure was faded and flaking.
- k. 47 C.F.R. § 17.57: "The owner must also immediately notify the Commission using FCC Form 854 upon any change in structure height or change in ownership information." The Commission's Antenna Structure Registration database incorrectly specifies the owner of antenna structure

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number 1245343 as M. J. Phillips Communications Inc Debtor In Possession
and specifies an incorrect mailing address for Phillips.

3. As the nation's emergency warning system, the Emergency Alert System is critical to public safety, and we recognize the vital role that broadcasters play in ensuring its success. The Commission takes seriously any violations of the Rules implementing the EAS and expects full compliance from its regulatees. We also must investigate violations of other rules that apply to broadcast licensees.

4. Pursuant to Sections 308(b) and 403 of the Communications Act of 1934, as amended,⁵ and Section 1.89 of the Rules, we seek additional information concerning the violations and any remedial actions taken. Therefore, Phillips must submit a written statement concerning this matter within twenty (20) days of release of this Notice. The response (i) must fully explain each violation, including all relevant surrounding facts and circumstances, (ii) must contain a statement of the specific action(s) taken to correct each violation and preclude recurrence, and (iii) must include a time line for completion of any pending corrective action(s). The response must be complete in itself and must not be abbreviated by reference to other communications or answers to other notices.⁶

5. In accordance with Section 1.16 of the Rules, we direct Phillips to support its response to this Notice with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of Phillips with personal knowledge of the representations provided in Phillips' response, verifying the truth and accuracy of the information therein,⁷ and confirming that all of the information requested by this Notice which is in the licensee's possession, custody, control, or knowledge has been produced. To knowingly and willfully make any false statement or conceal any material fact in reply to this Notice is punishable by fine or imprisonment under Title 18 of the U.S. Code.⁸

6. All replies and documentation sent in response to this Notice should be marked with the File No. and NOV No. specified above, and mailed to the following address:

⁵ 47 U.S.C. §§ 308(b) and 403.

⁶ 47 C.F.R. § 1.89(c).

⁷ Section 1.16 of the Rules provides that "[a]ny document to be filed with the Federal Communications Commission and which is required by any law, rule or other regulation of the United States to be supported, evidenced, established or proved by a written sworn declaration, verification, certificate, statement, oath or affidavit by the person making the same, may be supported, evidenced, established or proved by the unsworn declaration, certification, verification, or statement in writing of such person Such declaration shall be subscribed by the declarant as true under penalty of perjury, and dated, in substantially the following form . . . : 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'." 47 C.F.R. § 1.16.

⁸ 18 U.S.C. § 1001 *et seq.* See also 47 C.F.R. § 1.17.

Federal Communications Commission

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7. This Notice shall be sent to M. J. Phillips Communications Inc. at its address of record.

8. The Privacy Act of 1974⁹ requires that we advise you that the Commission will use all relevant material information before it, including any information disclosed in your reply, to determine what, if any, enforcement action is required to ensure compliance.

FEDERAL COMMUNICATIONS COMMISSION

David C. Dombrowski
District Director
Philadelphia District Office
Northeast Region
Enforcement Bureau

⁹ P.L. 93-579, 5 U.S.C. § 552a(e)(3).